

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

ORIGINAL

In the Matter of)
)
Service Rules for the 746-764 and)
776-794 MHz Bands, and)
Revisions to Part 27 of the)
Commission's Rules)

WT Docket No. 99-168

RECEIVED
JUL 19 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF RAND McNALLY & COMPANY

Rand McNally & Company ("RMC") hereby submits the following comments in response to the Notice of Proposed Rulemaking released on June 3, 1998, in the above captioned proceeding ("Notice").

RMC's comments address the Commission's proposal to allow licensees of the frequencies that are subject to the Notice to partition their licenses in accordance with Section 27.15 of the Commission's Rules. These rules, inter alia, purport to authorize Part 27 licensees to employ another "FCC recognized service area . . . (i.e., Major Trading Area, Basic Trading Area . . .)" to partition their licenses.¹

RMC has made clear to the Commission in numerous pleadings of record² that the Commission has no authority to use or allow its licensees to use RMC's MTA or BTA listings for any purpose other than in connection with the licensing of certain specific services in certain specific frequency bands as authorized under certain specific agreements with RMC. RMC has granted no such license, and the Commission has no right to employ, or encourage others to employ, RMC's MTA or BTA Listings for other services, including any service licensed under Part 27 or the particular services that are subject to the instant Notice.

Section 27.15(b) of the Commission's rules infringes on RMC's copyright, both expressly with its use (and encouragement of others to use) the MTA and BTA

¹ 47 C.F.R. §27.15(b).

² See, e.g., RMC's Request for Clarification, ET Docket 94-32 (Below 5 GHz), Jan. 22, 1999; Comments, WT Docket No. 98-169 (218-219 MHz), Oct. 28, 1998; Petition for Reconsideration and Request for Expedited Action, PR Docket No. 89-552 (220-222 MHz), Oct. 13, 1998; Comments, ET Docket No. 94-124 (Wireless Communications Service), Sept. 19, 1998.

No. of Copies rec'd 078
List ABCDE

listings, and implicitly so in its reference to other "FCC recognized service areas," which, with or without the express reference to MTAs and BTAs, wrongly suggests to Part 27 licensees that the use of MTAs or BTAs, which have been authorized for certain other CMRS services, is permissible for partitioning Part 27 licenses. Each time the Commission expands the scope of Section 27.15(b) to additional services, it compounds the injury to RMC.

The Commission has at its disposal an alternative workable formulation of partitioning rules, governing of AVM licenses, 47 C.F.R. 90.365(b), which (following the issuance of an Erratum)³ makes no reference to the use of the MTA or BTA Listings or other "FCC recognized service areas."⁴ Absent a license agreement with RMC that would permit partitioning of Part 27 or other not currently covered FCC-services along MTA or BTA lines -- an alternative which RMC has expressed a willingness to entertain, but as to which up to now the Commission has expressed no interest -- such a partitioning formulation should be employed here as well, and Part 27 should finally be amended to avoid further infringement, injury, and damages.

³ Erratum to Second Report and Order, Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61 (July 20, 1998).

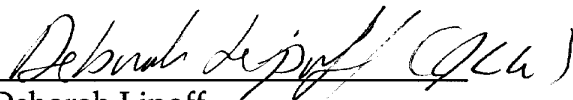
⁴ The AVM partitioning rule still allows partitioning along county boundaries. For the avoidance of doubt, while RMC obviously has no objection to partitioning along county lines, RMC would regard any licensee's effort to partition based upon the compilation of counties that are reflected in the MTA/BTA Listings as an infringement.

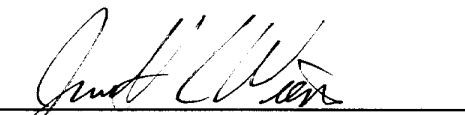
CONCLUSION.

The Commission has no right nor authorization to use, or encourage others to use, expressly or by implication, the MTA/BTA Listings for licensing, initial or subsequent partitioning, of the instant or any other Part 27 Wireless Communications Services licenses. Absent a license agreement permitting such use, the Commission should refrain and cease and desist from infringing upon these rights.

Respectfully submitted,

RAND MCNALLY & COMPANY

By: 
Deborah Lipoff
Vice-President/General Counsel
RAND MCNALLY & COMPANY
8255 North Central Park
Skokie, Illinois 60076

By: 
Jonathan L. Wiener
GOLDBERG, GODLES, WIENER
& WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900

Counsel for Rand McNally & Company

July 19, 1999